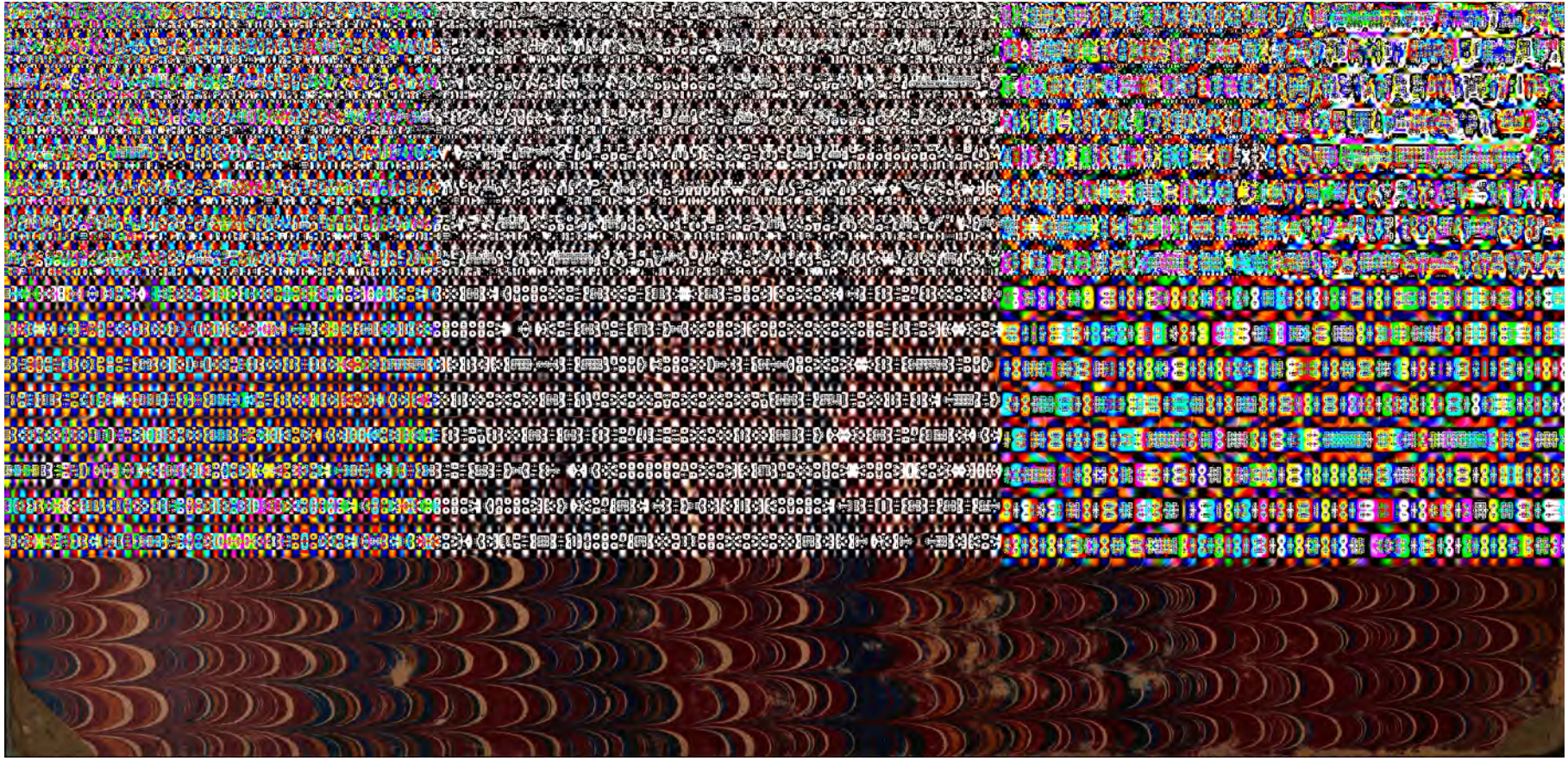

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EXTRATERRITORIAL CRIMINAL JURISDICTION

AND ITS

EFFECT ON AMERICAN CITIZENS.

A TREATISE BY

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EXTRATERRITORIAL CRIMINAL JURISDICTION AND ITS EFFECT ON AMERICAN CITIZENS.

INTRODUCTION.

To the Mexican-Texan Cutting case (1886) the origin of this essay is due. It aims to lay, for the first time, a scientific foundation to "Extraterritorial criminal jurisdiction." I am not aware of any international law book that had tried to solve this problem.

The mere statement of the President of the United States that our laws do not warrant the assumption of "extraterritorial criminal jurisdiction," can not save us from the consequences of that foreign assumption of "extraterritorial criminal jurisdiction," even if such statement were incontestable. Thousands of American citizens are crossing the Atlantic yearly, and visiting countries that assume "extraterritorial criminal jurisdiction." A Cutting case, translated in one of the several European languages, may, with some modifications of even a more serious form, occur on the European Continent at any time, not on account of libel, like our original Cutting case, but on the ground of other acts, on which some foreign countries specially legislated against foreigners.

We should therefore institute a search through such foreign legislation against foreigners, in order to find out not only how far we are liable to trial abroad, but to investigate whether or not such legislation be valid in view of generally acknowledged principles of international law. And should we have legitimate reason to contest such foreign legislation, we might rather do so as soon as possible instead of waiting for the occurrence of an actual case connected with such legislation.

It must be left, of course, with the Government of the United States to institute such search. All private means would prove to be insufficient. The Government alone can succeed in securing all information necessary for that task. The Government need only to issue an order to the diplomatic representants of the United States at foreign governments for a collection of all foreign laws, concerning punishment of foreigners for offenses committed abroad.

The urgent necessity of such a search the following lines will amply prove.

A. H.

CHAPTER I.

ATTITUDE OF THE GOVERNMENT OF THE UNITED STATES.

A.—DECLARATION OF THE PRESIDENT OF THE UNITED STATES ON EXTRATERRITORIAL CRIMINAL JURISDICTION.

President Cleveland, in his message of December, 1886, to the reopened Forty-ninth Congress, in reviewing the noted "Mexican Cutting case," (that is to say, the case of the American citizen Cutting, who had been arrested in Mexico on the charge of libel committed in Texas against a citizen of Mexico), said:

The incident has disclosed a claim of jurisdiction by Mexico, novel in our history, whereby any offense committed anywhere by a foreigner, penal in the place of its commission and of which a Mexican is the object, may, if the offender be found in Mexico, be there tried and punished in conformity with Mexican law. * * * The admission of such a pretension would be attended with serious results, invasive of the jurisdiction of this Government and highly dangerous to our citizens in foreign lands; therefore I have denied it and protested against its attempted exercise as unwarranted by the principles of law and international usages.

A sovereign has jurisdiction of offenses which take effect within his territory, although connected with or commenced outside of it, but the right is denied of any foreign sovereign to punish a citizen of the United States for an offense consummated on our soil in violation of our laws, even though the offense be against a subject of such sovereign. The Mexican statute in question makes the claim broadly, and the principle, if conceded, would create a dual responsibility in the citizen and lead to inextricable confusion, destructive of that certainty in the law which is an essential of liberty.

* * * * * * *

B.—THE TWO IMPORTANT PRINCIPLES LAID DOWN IN THE PRESIDENT'S DECLARATION.

President Cleveland, thus, regarding acts committed in violation of our laws, denies the right of foreign jurisdiction in general, admitting it only where said acts, though connected with or commenced in this country, take effect in the foreign country. With other words, the President denies the right of extraterritorial jurisdiction of offense on the following two grounds:

I. The authorities of the place of the commission of the offense have the privilege of priority of jurisdiction.

II. A dual responsibility is wholly inadmissible.

On the ground of these two generally acknowledged principles the President's protest against Mexico's attitude seems to be thoroughly justified. For, libel is punishable in Texas, and the offense of libel is consummated where the libelous paper first was published. Therefore Cutting's alleged offense, if ever, should not be prosecuted outside this country, even though the alleged offense were against a citizen of Mexico, and said libelous paper, published in Texas, were circulating in Mexico. The writer or publisher of a libel, in circulating his libelous paper abroad, does not commit a second offense; circulating being the purpose of publishing, circulating and publishing are united to causal relationship. The circumference of the circulation of a malicious libel may only be regarded as a measure of the degree of maliciousness of the libeler, and, in consequence of that, referred to in limiting the punishment.

C.—CONCLUSIONS, TO THE NEGATIVE, FROM THE PRESIDENT'S TWO PRINCIPLES.

As indisputably right as are the two principles laid down in the President's message, denying Mexico's right of jurisdiction of Cutting's Texan libel against a Mexican, the logic consequences of these two principles might appear, too.

If, as we saw, the "privilege of priority," on the part of the State of the commission of the offense, and a "dual responsibility" are the two grounds for denying to a foreign government jurisdiction of foreign offenses against their citizens, *such foreign jurisdiction must be conceded, where either of those grounds is wanting;* that is to say, where—

(1) The State of the commission of the offense is prevented from or renounces exercising its privilege of priority of jurisdiction, and, thus,

(2) The objection of a "dual responsibility" is overcome.

Two cases may illustrate the foregoing conclusion:

I.

Suppose Cutting really having committed said libel in Texas, thereby injuring a Mexican citizen and being liable to punishment in either State. Suppose further, Cutting having gone or fled to Mexico and been caught there.

Now the United States claim their "privilege of priority of jurisdiction."

But Mexico might answer:

"We recognize your 'privilege of priority of jurisdiction,' *but you are not in position to exercise it.* How can you guaranty that Cutting will return into your territory? The extradition treaty between the United States and Mexico does not embrace libel case. We have no more right to extradite Cutting than you would have to demand his extradition. You being thus prevented from exercising your 'privilege of priority,'

our *secondary* right of jurisdiction, our secondary right to punish Cutting according to our laws, may take place, and by our trial Cutting's 'dual responsibility' shall cease at once."

II.

Take for granted, that the case of libel is embraced by extradition treaty, or that no treaty at all exists, and extradition, according to the theory adopted by some governments, is left with each government as a matter of comity.

(See Halleck, "International Law," and Wharton's "Digest of International Law of the United States.")

Take, then, for granted, that Mexico is ready to extradite Cutting. The United States, however, might say:

"The big expenses of extradition are not warranted either by the person concerned of, nor by the case itself. We, therefore, renounce getting Cutting extradited."

In this case, too, Mexico could "legally" proceed to trial against her prisoner Cutting.

D.—CIRCUMSTANCES NOT PROVIDED FOR IN THE PRESIDENT'S DECLARATION.

We were dealing, heretofore, with cases relating only to the President's declaration on "Extraterritorial criminal jurisdiction." It were a wholly unwarranted claim, that a message to Congress, while dealing with so many important items, should settle within so sparely limited a space of print all questions discussed in such document. It is, therefore, quite self-understanding, that the President's declaration is far from exhausting the subject-matter. The President, in denying to any foreign sovereign the right of extraterritorial criminal jurisdiction, had in view only foreign jurisdiction of acts committed in this country *in violation of our laws*. In denying, by very strong reasons, to any sovereign the right of assumption of such jurisdiction, the President did not need expressly to declare, that, *ex fortiori*, his denial includes foreign jurisdiction of American acts *not punishable* by our laws. The President did not need expressly to declare it, because it is held a general rule, that no criminal responsibility can be stated for a deed not infringing on the penal laws of the place of its commission; with other words, "criminal responsibility is cohesive to statutory provision." (Wharton, Criminal Law)

Would Cutting, for instance, have been satisfied with *slandering* in Texas that Mexican, with calling him a robber, a murderer, etc., instead of *libeling* him, the Government of the United States might have interfered with Mexican criminal proceedings against Cutting—provided that slander be in Mexico, like in Europe, the same criminal offense as is libel —on the ground that slander in this country warrants only *civil* suit

but no criminal jurisdiction at all, and, indeed, the less of a foreign government than of the authorities of this country.

Some other cases in addition to slander may be imagined that, contrary to foreign criminal legislation upon them, can be settled in this country by *civil* suit only, or that are even not subjected in this country to any legal proceedings at all.

In all such cases the denial of any right whatever of foreign government to assume extraterritorial jurisdiction would seem a "matter of course."

And yet, we should remember that millions of people are sometimes divided in their opinions as to what may be a "matter of course." Perhaps those countries that assume extraterritorial criminal jurisdiction might be able to defend the course they took by some reasons which should appear a "matter of course," too. Perhaps that foundation of extraterritorial criminal jurisdiction might show some instances warranting even that principle of "cohesion of responsibility and local statutory provision" to be overruled in certain cases by a *higher principle common to all mankind.* Perhaps it might be proven that the non-disallowance of an act in one state *is by no means an obligation to other states to allow themselves to suffer from those acts.* Perhaps it might be proven that a right of extraterritorial criminal jurisdiction could be maintained (irrespective of and without prejudice to the acknowledged two principles adopted by our Government) by a *principle suspending all ordinary laws.*

We should, therefore, not only declare why we are disinclined to recognize any right of extraterritorial jurisdiction, but we shall have to answer the other party, why their reasons for assuming extra-territorial criminal jurisdiction, as far as not defeated by the two principles laid down in the President's message, should not be sustained.

E.—RESTRICTIONS AS TO THE CONCLUSIONS FROM THE PRESIDENT'S DECLARATION.

The President, in concluding the discussion of the Cutting case, says:

> Whatever the degree, to which extraterritorial criminal jurisdiction may have been formerly allowed by consent and reciprocal agreement among certain of the European states, no such doctrine or practice was ever known to the laws of this country or of that, from which our institutions have been mainly derived.

We shall see, hereafter, in Chapter II, D, that this statement of the President must be conceived "*cum grano salis.*" For we have to distinguish extraterritorial criminal jurisdiction *at large* from extraterritorial criminal jurisdiction *under the authority of international law.* The assertion of the President, that "no such doctrine or practice was ever known to the laws of this country," should be *restricted* to "extraterritorial criminal jurisdiction *at large.*" That is to say, the United States, indeed, wisely refrain from assuming extraterritorial criminal jurisdiction of offenses, *that do not touch this country*, but they, more

wisely, assume jurisdiction of certain extraterritorial offenses, *that affect this country or mankind in general.* They assume such extraterritorial criminal jurisdiction *under the authority of international law*, as we shall see in Chapter II, D.

We do not decide here whether that Mexican law on foreign libel comes under "extraterritorial criminal jurisdiction *at large*," deservedly denied by the United States, or under "extraterritorial criminal jurisdiction under the authority of international law," as practiced by the United States themselves. We indicate here the possibility only of the President's denial of "extraterritorial criminal jurisdiction" proving insufficient as to that Mexican statute, should it be shown that the Mexican statute is founded on the same principles of *international law*, from which the United States' legislation on foreign offenses arose, which we shall have to deal with in Chapter II, D.

Before going into the details of this investigation, we have to draw the *foundation of extraterritorial criminal jurisdiction*, to state its origin and circumference, measured by the sound extraterritorial laws of *the United States.*

CHAPTER II.

FOUNDATION OF "EXTRATERRITORIAL CRIMINAL JURISDICTION."

A.—GENERAL VIEW. ORIGIN AND AIM OF TERRITORIAL CRIMINAL LEGISLATION.

The best way of stating the principles of *extra*territorial criminal jurisdiction is to explain the origin and aim of *territorial* criminal jurisdiction.

We issue penal laws and punish crimes for *our self-defense* and for the *prevention of acts annihilating* our safety.

Self-defense is the *cause* and *prevention of crimes the aim* of criminal legislation.

But as we are confident that all civilized nations are interested alike in punishing acts destroying the safety of mankind, and as it is rather impossible to watch over the whole world, we satisfy ourselves with legislating on crimes committed *on our soil.* And so all other nations do. *Hence the general understanding, that crimes, in the legal sense, are local.*

We confine, therefore, punishment of murder, etc., to such acts committed within our acknowledged jurisdiction, not because we believe murder committed within foreign jurisdiction to be a harmless deed, or an act not disallowed, but because we are sure that all civilized nations take similar precautionary steps against such crimes as we do. Should we once learn that a state, supposed to be civilized, omitted or abolished laws punishing capital crimes, the United States certainly would resolve to resort to preventive measures against visitors from such state, and so make a murder committed there indictable in this country, should the perpetrator reach our shores. *We should do so, because we could not consider that state any longer a civilized one.*

In that case we may assume *extra*territorial criminal jurisdiction according to the *law of nations.*

The understanding, that crimes are local, is valid as to *civilized* territories only, but not as to uncivilized ones.

It is of no matter whether there be a slight difference between the states as to the *degree* of the gravity of a certain crime; the essential point that reassures us is the conscience, that, as to capital crimes and grave offenses, all civilized nations feel in their own behalf the same necessity of legislating in some efficient way.

With this understanding, and in order to *avoid inextricable confusion*, the states of the world confined, in general, their criminal legislation to the territory of their own, *save some exceptions allowed by international law*, the common law of nations.

We shall have now to explain how far the law of nations indulges in such exceptional extraterritorial jurisdiction.

B.—EXTRATERRITORIAL CRIMINAL JURISDICTION AS FAR AS IN ACCORDANCE WITH INTERNATIONAL LAW.

If our argumentation that—

(*a*) The origin and aim of criminal legislation at all are "self-defense and safety;"

(*b*) The understanding of territoriality of criminal jurisdiction of a state is valid towards civilized nations only—

If that our argumentation be right, it would follow that international law grants to every state, in which the law of nations is a part of the law of the land, *the right* to legislate on *extraterritorial* criminal jurisdiction.

A*a*.—In behalf of the state (according to B *a*.)

B*b*.—In the interest of mankind (according to B*b*.)

C*c*.—On mutual consent of the states (according to B*a* and *b*.)

A*a*.—IN BEHALF OF THE STATE.

We contend that we are entitled to legislate on extraterritorial jurisdiction on account of the *self-defense* and in behalf of the *safety* of the state towards other states; that is to say, to provide for punishment of *foreigners' foreign offenses* against the safety, the order, and the peace of our state: *Provided, of course, that such legislation be not at variance with the similar necessities of other states abiding under the protection of the same law of nations.*

B*b*.—IN THE INTEREST OF MANKIND.

We contend that we may assume, in the interest of mankind, a *triple* extraterritorial criminal jurisdiction differing—

(1) As to the *place* of commission of offense;

(2) As to the *nature* of offenses;

(3) As to the quality of *persons.*

(1) *As to the place of commission of offenses.*—We all know that we may assume extraterritorial criminal jurisdiction over *places where no other civilized authority yet exists*, as in certain lands of barbarous or half-barbarous tribes or nations; over places, where on account of the place being *common property of mankind*, no special jurisdiction of a special state can be established at all, as on the *high seas.*

(2) *As to the nature of offenses.*—We may assume extraterritorial criminal jurisdiction over *offenses against the law of nations*, as *piracy*, *slave-trade*, *breach of neutrality*, etc.

(3) *As to the quality of persons.*—We may assume extraterritorial criminal jurisdiction over the *officers*, and partially over the *subjects*, of the state, wherever they may be.

Cc.—ON MUTUAL CONSENT OF THE STATES.

We extend the criminal jurisdiction of the state to such extraterritorial places as were conceded by mutual consent in each state to other states for jurisdiction, as the *office of the diplomatic representant* and *public vessels in foreign countries*, this being mainly an emanation from the mutual comity of the states granting

(α) Exemption from detention to sovereigns of foreign states;

(β) Immunity to foreign ministers;

(γ) Immunity to troops which a sovereign allowed to pass through his dominion.

These three species (A*a*, B*b*, C*c*) of extraterritorial criminal jurisdiction may be referred—

The I species (A*a*, safety of the state) to *necessity*,

The II species (B*b*, interest of mankind) to *utility*,

The III species (C*c*, mutual consent) to *commodity*.

And by these three species or classes all extraterritorial criminal jurisdiction, as far as *warranted by international law* and harmonious with the general principles of *territorial* jurisdiction, is exhausted.

It remains for us now to explain in detail those three classes of extraterritorial criminal jurisdiction *under the authority of international law*, and to support them by reasons additional to those shown by the derivation itself of "*extraterritorial* criminal jurisdiction" from *territorial*.

And herewith we shall try to find out *how far the United States made use of their right of assuming "extraterritorial criminal jurisdiction" under the authority of international law*.

C.—THE THREE CLASSES OF "EXTRATERRITORIAL CRIMINAL JURISDICTION UNDER AUTHORITY OF INTERNATIONAL LAW."

1—FOR SELF-DEFENSE AND SAFETY OF THE STATE.

(*a*) *The principle itself.*

The right of self-defense is a well-recognized law of nature, against which all protests prove a failure every time. And as we grant the right of self-defense to individuals, we shall have to concede it so much the more to the state, that great combination of individuals. But this right of self-defense of the state were an illusory one should it remain restricted to offensive acts committed within the borders of the state.

If self-defense be not disallowed at all, we shall have the right to

defend our safety *against whatever offender from whatever direction.* If self-defense and safety of the state are cause and aim of *territorial* criminal legislation, self-defense and safety must be sufficient reasons for *extraterritorial* criminal legislation, too, providing for punishment of foreign offenses against the safety, the peace, and the order of the state.

(*b*) *Special reasons supporting the principle.*

(*α*) *No duty without right.*—By international law every state is bound to prevent by state law its citizens from committing acts of overt hostility against other States. This duty implies the right of the state to provide also for its protection against hostilities from subjects of other states.

(*β*) *International law of England as well as of the United States* recognizes the excusability of a state intruding, in cases necessary for self-protection, on the territory or the waters of a foreign nation.

The celebrated Sir R. Phillimore, in his commentaries on international law, says:

> The right of self-protection is prior and paramount to that of territorial inviolability.

And Prof. Francis Wharton, in his Digest of International Law of the United States (see § 50) says:

> When there is no other way of warding off a perilous attack upon a country, the sovereign of such country can intervene by force in the territory from which the attack is threatened, in order to prevent such attack.

Now, if a state has the right to intrude for self defense on a foreign *territory*, it has *a fortiori* the right to provide for punishment of foreign offenses against the state, should the offenders be caught *within* the state.

More explicitly: If warding off a threatened foreign attack warrants *intrusion* on *foreign* territory, such warding off must be allowed to the threatened state *on its own soil* so much the more.

(*γ*) *Conception of ideal consummation.*—There may be remarked in criminal law a certain class of offenses, as to the "consummation" of which the notion is disputable, to wit: foreign offenses against the safety, the order, and the peace of the state. If we commit an offense against the safety, etc., of a foreign state, the *results of our acts are intended to take effect in that foreign state;* thus our offense, although *technically* consummated in the territory of the perpetrator, may be considered as *ideally* consummated in that foreign country. Such interposition of ideal consummation for the technical one is no novel point at law. (But see "Restrictions," sub. (*d*) page 16.)

Connected with this theory, or rather dependent on it, is the theory of—

(*δ*) *Intraterritorial liability of extraterritorial principal and accessory.*—The latter theory was exhaustively dealt with by Professor

Wharton in "Treatise on Criminal Law," §§ 278 *seq.*, and supported by numerous instances.

(*c*) *Extension of the principle.*

As to the right of self-defense of a state, it is no matter whether that self-defense of a state against foreign offenders be confined to offenses against the state *itself*, to wit: its constitution, its independency, its seal, its lawful money, or be extended to offenses against the *citizens* of that state. As the state is composed of citizens, and the latter, with their government representing them, constitute the state, such state may justly extend its right of self-defense to the defense of its citizens and provide for their protection against injury, as well as for protection of the State itself.

From this point of view—though strange it may seem to English-American practice—that noted *Mexican* statute on *foreign libel* hardly could be contested. Professor *Wharton*, in his alleged "Treatise on Criminal Law," brings the case of *foreign libel under "Liability of extra-territorial principal;"* but there is no need to call for a *secondary* reason, while foreign libel may be put under the *main principle* of *self-defense of the state or its Citizens.*

Such legislation, like the alleged Mexican one, seems to be of course somewhat fribble, and a really great country never probably would take such a troublesome step to call for account a foreign libeller and to waste the time with such trifling. But that Mexican statute, like some other and much coarser strangeness, is a "legal" one.

Moreover, the most European states do *not go so far* as Mexico does. Especially Germany and France do *not* include foreigners' foreign libel in their provisions against foreigners' foreign offenses.

(*d*) *Restrictions to the Principle.*

Self-defense, like all other rights, has its limits, for exceeding of which we are to be held responsible. We are not allowed, for instance, to shoot at a boy for throwing us with snow-balls; nor to keep, for the sake of our safety, a dog assailing passers-by, or bellowing up the sleeping neighborhood night by night.

We recognize only *justified* "self-defense."

In this connection a state can not complain of "foreigners' foreign offenses" against the peace, the order, and the safety of the state, if the acts complained of were committed in the *legitimate use of the constitutional or legal rights of such foreign state*, or in *behalf of its constitutional liberty.* In this case the right of self-defense belongs to *both sides alike*, and no party can be punished by the other one. A state can not extend its punishing right of self-defense—in behalf of the peace, the order, and the safety of the state—to a degree of outrage, to wit, to a degree of *interference with the right of self-defense of* ANOTHER state.

This matter will be amply covered by our chapters IV and V, dealing with French and German legislation on "foreigners' foreign offenses against the state."

2.—IN THE INTEREST OF MANKIND.

(α) *As to places (uncivilized lands and high seas):*

From the understanding between all civilized nations that each and every one restricts, in general, criminal jurisdiction to their *own* territory, in order to not aimlessly interfere with other nations' jurisdiction, the point of view arises, that every state may extend its jurisdiction to such places as—

(α) Are *not* yet covered by jurisdiction of any special state; or

(β) Can not be covered at all by jurisdiction of any special state.

Such places are—

(α) Unsettled and uncivilized lands;

(β) The high seas, common property of mankind.

Support to the argument.

(α) The aim of extraterritorial jurisdiction in uncivilized lands and on the high seas is, *first*, to protect our citizens sojourning at such places. "As far as a state can protect itself, so far its jurisdiction extends" (Kent).

The *second* reason is, to *promote humanity in the world*, to lend protection to human beings wanting the blessure of safeguard of a national law at those places.

Either of these reasons is sufficient to warrant to any state the assumption of extraterritorial jurisdiction. Practice, however, secured general recognition to extraterritorial criminal jurisdiction on the *high seas* far earlier than to extraterritorial criminal jurisdiction over *uncivilized lands*.

"It is generally conceded that *subjects* should be held responsible to the courts of their country for offenses committed in barbarous or unsettled lands" (Wharton's Criminal Law, § 271), while not all authorities are of the opinion that "any government may assume jurisdiction over offenses committed in solitudes, as in cases of crimes committed on the solitudes of ocean." (Sentence of a judge of the New Jersey supreme court, quoted in Wharton's Criminal Law).

According to our sytem, laid down in part B3 of this chapter, *subjects* are responsible to the state of their allegiance *everywhere*, including barbarous and unsettled lands. The lack of general recognition to the right of the state to assume extraterritorial criminal jurisdiction over offenses committed in barbarous and unsettled lands is probably less due to a denial of the *principle*, but to *commodity*. For as it is apparent that an uncivilized land, after having been settled upon by subjects of one state will soon exercise some attraction for settlement to citizens of other states, too, the state of the first settlers chooses to confine its jurisdiction in that uncivilized land to its own subjects from the mere

aspect, otherwise to be harassed by innumerous conflicts with that mixed population, rough in their habits, as first settlers sometimes are. It is quite a policy of prudent judiciousness. The mother state of the first settlers dislikes to be intricated in collisions with all other states by the differences of those inhabitants of adventurous fore-life, differences either between each other or between the civilized population and the natives. But this policy of safe prudence should not be regarded precedentially a prejudice to the *principle* of the *right* of the state to assume extraterritorial criminal jurisdiction over unsettled and uncivilized lands, where no jurisdiction of any state yet exists.

(β) This principle is valid, so much the more, as to such barbarous or unsettled lands, as are not even inhabited by any civilized people, nor recognized by treaty with any state.

(γ) An offspring of that principle is the consular judiciary system in remote states, though civilized, but far inferior to our civilization.

(δ) Jurisdiction of all states over the high seas had been crystallized in the theory that a ship at sea is regarded in international law as a portion of the state the flag of which she bears; and the consequence of this generally acknowledged theory is, that "crimes committed on board a ship on the high seas are triable only by the authorities of the country to which she belongs;" no matter whether it be a public ship or a merchant vessel. (With some exceptions [1, As to offenses against international law; and, 2, As to merchant vessels within the marine belt, the port, etc.;] we shall have to deal below).

(*b*) *As to the nature of offenses.* (*Offenses against international law.*)

Dependent upon the theory, stated in C 2 of this chapter, is the general rule of international law, that an offender against international law, on account of being an enemy to mankind, may be punished by any state getting first hold of him.

"Offenses against the law of nations, wheresoever and by whomsoever committed, are within the cognizance of the judicial power of any state." (Halleck and other text-writers.)

(*c*) *As to persons.* (*Subjects everywhere.*)

Every state may assume extraterritorial criminal jurisdiction over its subjects irrespective of their place of sojourning. The reason of that international understanding seems to be this: A person sojourning at a foreign country, without being naturalized there, may, after some time, change his place of residence again, emigrate to another country, and finally return to his mother country. Such emigrants, belonging to the "floating population," easily could escape every responsibility for foul deeds committed abroad should they be thought separated from their original allegiance to the laws of their mother country, while living abroad as unnaturalized foreigners. In traveling between countries not provided with extradition treaties, said people would

enjoy full immunity, could they not be held, at least, responsible at home, for their acts committed abroad. A subject of the state remains, therefore, subject to its laws, as long as he did not renounce allegiance to that state in behalf of another one. And, likewise, as a good family takes care that its children, when on a visit, behave themselves, so a state is bound by honor and self-respect, to provide that its subjects, when abroad, don't commit an act that would be indictable, when committed at home.

Germany, for instance, goes so far as to punish Germans for violently resisting *abroad* a foreign public officer, while the latter is on duty.

Germany punishes in general, Germans for committing offenses in foreign countries, when such offenses were punishable as well by the laws of the place of commission as by German law, provided the case was not yet settled (*a*) by acquittal in that foreign country, or (*b*) by punishment as pronounced by that foreign court, or (*c*) by pardon in that foreign country, or (*d*) by statute of limitation of that foreign country, or (*e*) by omission, on the part of the injured party to file a petition, should such initiative be necessary in that foreign country for entering suit. See §§4, 3 and 5 of the German penal code.

And in compensation thereof, Germany, by §§9 of her penal code declares:

"*A German shall not be extradited to a foreign government for prosecution or punishment.*"

If a German committed a crime abroad and returned then to Germany, he can not be extradited, but he will be prosecuted in *Germany*, and tried on the face of the evidence, furnished by any foreign government and produced or legalized by the foreign German diplomatic or consular service.

If some countries do not assume extraterritorial criminal legislation over their subjects abroad to a large degree, their attitude is guided by the belief, that all civilized countries are interested alike in punishing offenses; they refrain from extending their jurisdiction, in general, over subjects abroad, because of their surety that their subjects abroad would be punished abroad, should they commit there an offense; and in the worst case "extradition" may help such subject to deserved punishment, should he escape justice for a time.

But we should not rely on extradition; first, because that matter lies everywhere in a wholly unsettled shape; and second, because the high expenses of extradition seldom warrant such course.

The necessity of assuming, on the part of the state, extraterritorial criminal jurisdiction over its *subjects* abroad, may appear from the following:

If a fugitive from justice, a subject of the State A comes into the State B, the sovereign of State B has at least the right, should he deem it necessary or advisable, to expel such foreign fugitive, and so the possibility of the fugitive going back to the place of commission of offense

can be assumed. But if that fugitive from justice, escaping from State A to State B, is a subject of the latter State, his sovereign can not (for instance, not if the latter State B be Germany, as was shown above) under existing laws extradite him, nor could his sovereign—according to the laws of many states—expel him. Thus, if State B did not assume extraterritorial criminal jurisdiction over its subjects abroad, such subjects of State B would be, in fact, in possession of a charter of immunity abroad, provided they were skillful or smart enough to escape justice and leave the country where they committed the crime and return to their mother country.

If the fugitive from justice, whose extradition can not be effected—either on account of lack of treaty or on account of the big expenses—is a subject of the state, on the soil of which the crime was committed, that fugitive damaged or injured his *own* country, and such country must acquiesce in the loss by her subject. But it is a strange insinuation that a state should be forced into suffering from injury by an *alien* escaping justice. The question may therefore be raised, if it were not opportune, to convert the *right* of the state of assuming extraterritorial criminal jurisdiction over *subjects*, into *international duty*, especially of those states denying extradition of subjects.

Such duty could, of course, be only a secondary one, that is to say, the state should assume jurisdiction over offenses committed by subjects abroad, only in the case where the "privilege of priority" of the state, in which the crime was committed, can not be exercised, and under restrictions similar to those shown in the German statute quoted above (page 19).

To those denying the right of extraterritorial criminal jurisdiction over subjects at all and at any rate, the following remarks are directed:

It is generally held that a state is bound by honor and duty to *protect* its subjects abroad. This duty of protection implies, as a compensation thereof, the right of calling for account the protected ones if they turn offenders. No duty without right, and no right without duty. Protection on the one side means allegiance on the other side. The state's criminal jurisdiction over *subjects abroad* can not be defeated by any shadow of judicial argument.

3. ON MUTUAL CONSENT OF THE STATES.

(*a*) Diplomatic representatives.

(*b*) Public vessels.

As to this part of extraterritorial criminal jurisdiction a wide difference of opinion exists between certain states.

In general, extraterritoriality is granted to diplomatic representants (including the secretary of legation) and public vessels.

But some countries, as *Germany*, exempt from the right of extraterritoriality the *residence* of foreign ministers. (See sentence of the German supreme court 20, November, 1880, Crim. Decisions 3, 70.)

On the other hand, some countries, as Belgium, often try to secure to their *merchant* ships, while in foreign harbor, the right of extraterritoriality, generally accorded to *public* vessels only.

The United States, however, in both alleged cases, take the opposite ground. They concede extraterritoriality to the residence of foreign ministers and deny it to foreign merchant vessels in American harbor, marine belt., etc.

D.—LEGISLATION OF THE UNITED STATES IN BEHALF OF "EXTRATERRITORIAL CRIMINAL JURISDICTION UNDER AUTHORITY OF INTERNATIONAL LAW."

Aa.—PRESIDENT CLEVELAND'S MISTAKE.

The United States made, indeed, a very *moderate* use of their right awarded by international law, to legislate on foreign offenses, especially on foreign offenses against the "safety, order, and peace of the state," (Union). But at all means that legislation of the United States is a sufficient proof of their *full acknowledgment of the principle itself*, that the state is entitled to protect itself against foreign injury, and that, to a certain degree, *international law warrants extraterritorial criminal jurisdiction.*

When President Cleveland in his message to Congress (see chapter I, page 10) asserted

> Whatever the degree to which extraterritorial criminal jurisdiction may have been formerly allowed by consent and reciprocal agreement among certain of the European states, no such doctrine or practice was ever known to the laws of this country, or of that from which our institutions have been mainly derived.

he was *greatly mistaken. The Revised Statutes of the United States exhibit lots of cases of legislation for extraterritorial criminal jurisdiction,* as will be shown in the next division.

Bb.—LEGISLATION ON EXTRATERRITORIAL CRIMINAL JURISDICTION TO BE FOUND IN THE REVISED STATUTES OF THE UNITED STATES.

1.—*For self-defense and safety of the state.*

SEC. 5353. "*Every person* who, knowingly, transports or delivers or causes to be delivered nitro-glycerine or powder mixed with oil, on board any *vessel or vehicle* whatever, employed in conveying passengers by land and water *between any place in a foreign country* and any place of the United States, shall be punished," etc. Section 5354 fixes the punishment for the case in which such transportation of explosives had caused the of death a person. Section 5355 defines the manner in which transportation of explosives is allowed.

Said section 5353 is a first-class proof of assumption by the United States of extraterritorial criminal jurisdiction over foreign offenses against the safety of the state and its citizens.

The word "transport" can, indeed, be construed so as to refer to an

act consummated in this country, and so can the words "causes to be delivered," but "*delivering* explosives *on board* a vessel or vehicle" conveying passengers "between a *foreign* country and the United States" means, without any doubt, an act committed *abroad*, an act committed on *foreign shores, from which the vessel started*, especially when such vessel was a foreign merchant ship, bearing the flag of a foreign country; and "*delivering*" explosives on board a vehicle, conveying passengers between "a foreign country and the United States," means the staying of such vehicle, at the time of delivering the explosives, *on foreign soil.*

An offense against section 5353 thus is punishable when committed *abroad* as well as when committed in the United States, irrespective of the offender being a subject of this or of the foreign country; section 5353 deals with "*every person.*"

"Delivering" explosives, f. i., on board the *Alaska* at Liverpool, England, or at a depot of a Mexican railroad centering at the American border, is punishable in this country according to section 5353, save the "privilege of priority of jurisdiction" on the part of Great Britain or Mexico, should it be claimed by them.

Had it been the intention of the legislator to confine punishableness of "delivering" to an act committed within this country, section 5353 would read as follows:

"* * * conveying * * * *between any place of the United States* and any place of a foreign country," and not "*between any place of a foreign country* and any place of the United States."

At any rate section 5353 is to be construed so as to include a foreign merchant ship, while lying at a foreign dock and preparing to start for the United States.

(Moreover, see Wharton, Crim. Law, on "Liability of extraterritorial principal," as indicated on page 15.)

2.—*In the interest of mankind.*

(*a*) *As to places.*—(*a*) *Half-civilized, uncivilized, and unsettled lands.* Sections 4083–4087 devolve judicial authority on American ministers and consuls in certain non-Christian countries (China, Japan, Siam, Egypt, Madagascar) where American citizens live. "Such jurisdiction shall embrace all controversies between citizens of the United States or others, provided for by such treaties, respectively." (4085.) "Jurisdiction in both criminal and civil matters." (4086.)

Section 4088 devolves the same power on United States consuls and commercial agents in countries not inhabited by any civilized people or recognized by any treaty with the United States; they have the right to try misdemeanors, and in civil cases the power of a justice of the peace in the United States.

Sections 5570–5578 declare the claim of the United States to any island, rock, or key on which a citizen of the United States discovered

a guano deposit, and which was not within the lawful jurisdiction of any other Government, and not occupied by citizens of any other Government.

(3) *On the high seas.*—5339. Every person who commits murder—

First, within any fort, arsenal, dock-yard, magazine, etc., under the exclusive jurisdiction of the United States;

Second, or *upon the high seas*, etc., within the maritime jurisdiction of the United States and out of the jurisdiction of any particular state;

Third, or who upon any such waters maliciously strikes, stabs, wounds, poisons, or shoots at any person, of which such person dies, shall suffer death.

Nearly the whole Chapter III (sections 5339–5391) deals with "crimes arising within the maritime jurisdiction;" but section 5344, dealing with officers or owners of vessels, through whose misconduct, negligence, etc., life is lost, *is not confined to the maritime jurisdiction of the United States* as defined by section 5339; though sections 5341, 5342, and 5345 are expressly referred to section 5339; and the same, as with section 5344, is the case with sections 5363–5367.

(*b*) *As to the nature of offenses.* (Offenses against international law.)—Offenses and crimes against *international law* are embraced by the criminal statutes of the United States Revised Statutes, according to the Constitution of the United States, Art. I, sec. 8, which bestows on Congress the power to legislate on crimes against international law. Such legislation (on piracy, etc.) we find in sections 5323–'24 and 5368–'76.

(*c*) *As to persons* (subjects abroad).—Section 5382 deals with citizens voluntarily on board a foreign slave-trade vessel. Fine not more than $2,000, and imprisonment not more than two years.

Section 5331. Every person owing allegiance to the United States, who levies war against them, or adheres to their enemies, giving them aid and comfort within the United States *or elsewhere*, is guilty of treason.

"Every person owing allegiance" means those non-citizens, too, who declared on oath to become citizens, and to have renounced allegiance to their former sovereign.

Section 5335. Citizens' intercourse with foreign Government to the intended detriment of the Government of the United States, is punishable. "Every citizen of the United States, whether actually residing or abiding within the same *or in a foreign country*," etc.

(3) *On mutual consent.*

Section 1750. Every secretary of legation and consular officer is hereby authorized to administer to or take from an person an *oath*, affirmation, affidavit, or deposition. If *any person* shall willfully and corruptly commit perjury, such offender may be charged, proceeded

against, tried, and convicted, and dealt with in any district of the United States, as if such offense had been committed in the United States.

This statute, evidently emanating from the extraterritoriality of legacy, is *the strongest proof of the fact that the United States, in certain cases, assumed the right of extraterritorial criminal jurisdiction.* Though the person of the consular officer be not, like the secretary of legation, entitled to extraterritorial rights, the seal of the state, held by him, makes those abusing it by perjury or forgery, *indictable extraterritorially.*

From these quotations it will appear that President Cleveland gravely mistook in declaring that "no such practice or doctrine (that is to say, extraterritorial criminal jurisdiction) *was ever known to the laws of this country.*"

CHAPTER III.

FRENCH AND GERMAN LEGISLATION ON FOREIGNERS' FOREIGN OFFENSES AGAINST THE STATE.

A.—TEXT OF THE MAIN LAWS.

1.—FRENCH LAW.

Section 7 of the French "Code d'Instruction Criminelle" (Code of Criminal Proceedings) reads as follows:

A foreigner, who in a foreign country shall commit, either as a main culprit or as an accomplice, *a crime against the safety of the state* or the *crime of counterfeiting* either the seal of the state or national money or national certificates or bank notes issued under the authority of the law, shall be prosecuted or tried according to the provisions of French law, should that person be arrested in or surrendered to France.

2.—GERMAN LAW.

Section 4 of the "Strafgesetzbuch für das Deutsche Reich" (Penal Code of the German Empire) reads as follows:

Crimes and offenses committed in a foreign country shall, as a rule, *not* be prosecuted.

But there may be prosecuted, according to the Penal Code of the German Empire:

(1) A German or a foreigner who, in a foreign country, committed—
  (*a*) An *act of high treason* against the German Empire or a Federal State, or
  (*b*) The crime of counterfeiting, or who
  (*c*) As an official of the German Empire (or of a Federal State) committed an act that is to be considered an offense of an officer while on duty.

(2) A *German* who, in a foreign country committed an act treacherous to the German Empire (or a Federal State) or a slander or libel against a German Federal Sovereign.

(3) A *German* who, in a foreign country, committed an act punishable according to the laws of both Germany and that foreign place of commission.

B.—SYNOPSIS OF THE FRENCH AND GERMAN LAWS.

FRENCH LAW	GERMAN LAW
On extraterritorial criminal jurisdiction of foreigners' foreign acts comprises:	
(*a*) *Political offenses.*	
Crimes, *against the safety of the state.*	*Acts of high treason.*
(*b*) *Counterfeiting.*	
Counterfeiting the *seal of the state* or *French money.*	Counterfeiting *whatever* money.
(*c*) *Official offenses.*	
	Offenses of an officer while on duty.

C.—CRITICISM.

I.—FRENCH AND GERMAN LAWS ON FOREIGNERS' FOREIGN POLITICAL OFFENSES

(*a*) *French law.*

France punishes foreign *crimes against the safety of the state* (see p. 25). Those crimes are defined in the "Code Pénal" (criminal code) section 75 *seq.*, and divided into "crimes against the *exterior* safety of the state (sections 75–85), and "crimes against the *interior* safety of the state" (section 86 *seq.*). We shall deal with them in the next chapter (IV).

(*b*) *German law.*

Germany, to the contrary, punishes only *foreigners' foreign acts of high treason;* that is to say, only crimes against the *interior* safety of the state. An "act of high treason" means in German law "Hochverrath," while crimes against the *exterior* safety of the state are termed in German law "Landesverrath" (acts treacherous to the country). The latter crime, if committed abroad, is punished only if perpetrated by a *German* (see p. 26, and sections 4–2 of the German Penal Code). The reason thereof we shall see later. But though Germany exempts foreigners' foreign "treacherous acts to the country" from punishment in general, she reserves to herself the right to deal in another way with such foreigners' foreign "acts treacherous to the country," as warrant the *usage of war* to take effect, dispensing with the ordinary law, as we shall see below.

German law on "high treason" is defined by sections 80–86, and German law on "acts treacherous to the country," by sections 87–93 of the German Penal Code.

II.—FRENCH AND GERMAN LAW ON FOREIGNERS' FOREIGN COUNTERFEITING.

(*a*) *General distinctions.*

France punishes foreigners' foreign counterfeiting—

(α) The seal of the state.

(β) Lawful *French* money.

Germany punishes foreigners' foreign counterfeiting whatever money, not only German one; this was expressly declared by the preamble to the German Penal Code, page 15. The reason of that declaration is rather clear; the citizens of the state might be defrauded with counterfeited foreign money as well as with counterfeited German money. Germany thus extends her extraterritorial criminal jurisdiction not only to crimes *intended* to take effect in Germany, but even to such as might, perhaps, touch Germany in their effect.

(*b*) *Position of the United States towards those laws.*

Counterfeiting the seal of the French state comes, in some way, under the general provisions against falsifying documents, with intent to defraud the United States (section 3422, Revised Statutes of the United States). Counterfeiting foreign money was provided for, as well as counterfeiting domestic money, by penal statutes of the United States. In either case of counterfeiting, committed within the United States, our Government can justly claim their privilege of priority of jurisdiction, should an American citizen be held for trial in France or Germany for counterfeiting committed in this country.

Moreover, counterfeiting is provided for by most of the extradition treaties, and such is the case as to the treaties of the United States with France and Germany.

In general may be said: As to the extraterritorial criminal jurisdiction assumed by France and Germany over the crime of counterfeiting, the question of "privilege of priority of jurisdiction," if raised by the United States, probably never will lead to any difficulty, because in punishing counterfeiting all governments are interested alike.

III.—GERMAN LAW ON FOREIGNERS' FOREIGN OFFICIAL OFFENSES.

Germany sometimes intrusts foreigners, to wit, natives of Germany, living in distant foreign countries, with official or officious business.

To deny, from principle, the right of extraterritorial criminal jurisdiction in such case would be destructive of all righteousness of intercourse between nations, while conceding such jurisdiction might intricate the Government of this country in serious difficulties, because of the difference of opinions as to the foundation of the indictment.

The only way of obviating such collisions is *not to accept at all any official business, any commission from a foreign government*, except services of charity, warranted by the interest of humanity, as, for instance, the assumption of officious protection of foreigners being left unprotected after necessary departure of the diplomatic representant of their country.

It would be of great profit to forbid by law to American citizens the acceptance of any foreign official or officious business or commission except of a commission of charity, and that only under *consent by our Secretary of State.*

Counsellors at law, employed by envoyees or consuls of foreign governments in this country, are of course exempted from that restriction.

D.—OUTLINE OF THE FOLLOWING CHAPTERS.

We shall have to quote now from the French and German penal codes those statutes on "crimes against the safety of the state" mentioned in CI a and b of this chapter, and appliable (according to section 7 of the French code of criminal proceedings and according to sections 4, 1 of the German penal code) to *foreigners in foreign country.*

We shall review first French and then German law, and we shall, for the sake of comparison, quote German laws on "acts treacherous to the country, though they are not appliable to foreigners' foreign acts except when warranting the "usage of war."

We shall review French and German law with special regard to *their effect on American citizens* and with special regard to our indispensable theory of the "privilege of priority on the part of the state where the act was committed." And, above all, we shall have carefully to investigate if the right of *justified* self-defense on the part of the legislating power were *kept within fair limits or not.*

CHAPTER IV.

FRENCH LAW ON CRIMES AGAINST THE STATE AND ITS EFFECT ON AMERICAN CITIZENS.

A.—CRIMES AGAINST THE EXTERIOR SAFETY OF THE STATE.

In the French penal code we read, under the headline of "Crimes against the exterior safety of the state," as follows:

SEC. 75. A *Frenchman* who shall bear arms against France is to be punished with death.

SEC. 76. *Every one* who shall engage in machinations or intercourse with foreign powers or their agents for the purpose of entreating them to commit hostilities or to undertake war against France, or to furnish them with the means therefor, is to be punished with death, even if a war did not outbreak.

SEC. 77. The same punishment shall be executed for intercourse with the enemy for the purpose of facilitating to him the entry in French territory, or of delivering up to him towns, fortresses, plans, harbors, magazines, arsenals, vessels, or of furnishing him with troops, money, supplies, or of aiding him by undermining the loyalty of the army of the country.

SEC. 78. If the intercourse with subjects of an inimical power, though not aiming such crimes as described in section 77, results in furnishing the enemy with informations obnoxious to the military or political situation of France or her allies, the punishment shall be detention, without prejudice to the statutes relating to agreement for espionage, should such be the case.

SEC. 79. It makes no difference whether the crimes described in sections 76 and 77 be committed against France or her allies.

SEC. 80. A public officer or agent, or every one intrusted with an official negotiation of secret nature, who shall betray the secret to an agent of a foreign or hostile power, shall be punished with death.

SEC. 81. A public officer who shall deliver up to the enemy plans of fortresses shall be punished with death; if he delivered them up to a neutral power or to an ally, the punishment shall be detention.

SEC. 82. *Every other person*, having secured such plans by corruption, fraud, or violence, and delivering them up to a foreign power, shall be punished like an officer. [But if such person did not obtain said plans by illegal means, the punishment shall be deportation, if the plans were delivered up to the enemy of the country, and imprisonment of two to five years if they were delivered up to a neutral power or to an ally of France.]

SEC. 83. Concealing spies is to be punished with death.

SEC. 84. *Every one* who, by hostile acts, not approved by the government, shall intricate the state so as to expose it to war, shall be punished with banishment, and if the war broke out, with deportation.

SEC. 85. Whoever shall expose, by hostile acts not approved by the government, Frenchmen to retaliation, shall be punished with banishment.

B.—CRIMES AGAINST THE INTERIOR SAFETY OF THE STATE.

Section 86 seq., deal with civil war, with illegal use of the military force, with pillage and devastation within the territory, and provide as follows:

(*a*) A crime for the purpose of exciting civil war is to be punished with death.

(*b*) A proposal of complotting for that purpose is to be punished:

(α) With deportation, if an act leading to that purpose were committed.

(β) With detention, if no such act were committed, though two or more persons had agreed for complotment.

(γ) With detention of one to five years, if the proposal were not accepted by any one, that is to say, no complotment were effected.

C.—CRITICISM.

We saw in Chapter III, A I, that all "crimes against the safety of the State" (section 75 seq. of the French penal code) are to be resented irrespective of the nationality and place of commission of the deed, for section 7 of the French "code of criminal proceedings" provides for punishing foreigners' foreign crimes against the safety of the State "according to the provisions of French law should that person be arrested in or surrendered to France." (See page 25.)

We shall now investigate this extraterritorial criminal jurisdiction of France.

Section 75, according to its verbal tenor, is applicable to Frenchmen only. A foreigner, though not a subject of the inimical power, may join the army of the latter and enjoy the rights of the same according to the law of nations and the usage of war.

Sections 76–79 deal with acts committed by non-soldiers, either with the purpose of exciting war against France or during a French war. In this case a foreigner, having committed such a crime as defined by sections 76–79, may be treated according to the "usage of war" without prejudice to the question of the right of extraterritorial criminal jurisdiction. But as far as the accused one violated said French statutes within the *territory of the United States*, we have to search whether or not he be altogether punishable according to sections 5281–5283 and 5286 of the Revised Statutes of the United States, reading as follows:

5281. Every *citizen* of the United States who, within the territory of the United States or the jurisdiction thereof, accepts or exercises a commission to serve for a prince, state, or people in war against a prince, state, or people with whom the United States are in peace, shall be deemed guilty of a high misdemeanor and be punished with imprisonment not more than three years and a fine not more than two thousand dollars.

5282. Every *person* who, within the territory of the United States or the jurisdiction thereof, enlists or enters himself, or hires or retains another person to enlist or

enter himself, or to go beyond the limits of the United States with the intention to be enlisted or entered in the service of any foreign prince or state or people as a soldier, etc., shall be guilty of a high misdemeanor and be punished with imprisonment not more than three years and a fine not more than one thousand dollars.

5283. Every person who, within the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, etc., to cruise or commit hostilities against the subjects or property of any foreign prince or state, etc., with whom the United States are at peace, or who issues or delivers a commission within the territory, etc., of the United States for any vessel to the intent that she may so be employed, shall be deemed guilty of a high misdemeanor and fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, with her tackle, etc., shall be forfeited, one-half to the use of the informer and one-half to the use of the United States.

5286. Every person who, within the territory or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of colony, district, or people with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars and imprisoned not more than three years.

Thus an American perpetrator of said crimes described in sections 76–79 of the French penal code might altogether violate one or more of the quoted sections of the Revised Statutes of the United States. In this case two possibilities could occur:

(1) The United States had punished the perpretrator for violation of *our* laws. In this case the United States would have to protect the offender, if later arrested in France, against a *second trial for the same offense*, should he be an American citizen.

(2) The United States had, because of their ignorance of the deed, not punished the offender. In this case the United States can not claim their "privilege of priority of jurisdiction," because there is no provision in the treaty of extradition between France and the United States for extraditing such offenders, and therefore the United States are not in position to make use of their "privilege of priority of jurisdiction."

Section 80 deals with public officers and such persons as negotiate official affairs. We may refer, at this point, to the German statute, quoted in Chapter III A II, c (punishing foreign offenses of Germans and foreigners while in official German duty), and to our commentary upon it, in Chapter III C III.

Section 81 deals with time of war, to which the "usage of war" is applicable, as in case of sections 76–79; these sections thus need no excuse.

Section 82. *This section invites us to stop and think for a moment*, for section 82, part 2, refers to time of war as well as times of peace; it threatens with detention of two to five years every unofficial person (including foreigners in foreign countries) who, having obtained, by means *not* illegal, plans of fortresses, shall deliver them up to a foreign power, say to the government of his mother country.

Here we have got on the part of France an instance of what we called above *exceeding the right of self defense*, a transgression of *our* rights of self-defense.

The following case of fiction may serve for explanation:

Suppose the United States and France were close neighbors again; France, for instance, were once more in possession of Canada and worried this country, so as to make the outbreak of a war in near future time rather possible. Under those circumstances an American traveler in Canada happens to get, but not by illegal means, plans of French Canadian fortresses. Our American citizen would not bethink himself how to act; he would resolve:

"As I did not get my treasure by corruption, by fraud, theft, or violence, my conscience remains intact. I wouldn't keep, for my own use, a purse I should happen to find on the street; but if, next to the purse, I should discover a sick or starving man lying prostrated, I wouldn't hesitate to give him some little money out of that purse should I be unable to help him from my own.

"Now, *my own country is in danger of war with France.* I am bound to *help my country*, and *it wants these plans*, and so *I shall deliver them up to the government of my country.* In doing so I am committing only an act of *justified self-defense*, for my country is threatened with war. Nobody can blame me for assisting, by means not involving fraud, corruption, or violence, my imperilled country."

Thus the French law transgressed the line of justified self-defense by denying to other ones the *same right of self-defense.*

The logical result of our argumentation is this: An act treacherous to one country, and committed by a foreigner in a foreign country, may be sometimes on the part of the perpetrator a *highly patriotic act towards his own country.*

Punishing that, if not connected with a common crime, is utterly cruel and unnatural.

We declare, therefore, that section 82 of the French penal code, in denying to other states the right of self-defense claimed by France herself, and in punishing foreign fair and justified self-defense, *exceeds the limits of the right of extraterritorial jurisdiction*, granted on the ground of self-defense. *Section 82 is a violation of the Law of Nations.*

Section 83 deals with acts committed in time of war; we are thus not concerned by this statute. As far as "espionage" takes place in time of peace the place of commission is France, and American jurisdiction out of question.

Sections 84 and 85 refer to hostile acts committed, in behalf of France, toward foreign countries, thereby endangering the peace of France. If an American citizen, say a native of France, should perpetrate such an act on American soil, the United States could not protect him from trial in France, should he there be arrested, provided that said "hostile acts" were not such as defined by sections 5281–83 and 5286 of the

Revised Statutes of the United States, quoted above (sub-C of this chapter, see pages 30 and 31) securing to the Government of the United States the "privilege of priority of jurisdiction," under the restrictions noted (sub-sections 76–79, see page 30).

Section 86 *seq.* relating to crimes against the *interior* safety of the State, might affect Frenchmen of all parties living in this country. If such a one, though a naturalized citizen of the United States, should publish in America articles recommending the restoration, in France, of monarchical institutions by *revolutionary* means, he would be punished, if seized in France, with prison of two to five years, even if his proposal were not accepted by any one. The same result would follow should, for instance, an American citizen advocate, in an American newspaper, that the French nation may rise against one of its official bodies (the Cabinet, or the Chamber of Deputies, or the Senate) and put them, by *force*, out of office.

FINAL REMARKS.

Though severe French law appears towards foreigners' foreign crimes against the *exterior* safety of the State, it proves to be relatively moderate as to crimes against the *interior* safety of the State, for it punishes only *exciting civil war*, but does not include political partisan combinations as far as not amounting to *revolutionary* complotment.

German law, to the contrary, as we shall see now in the two following chapters, proves to be fair, towards foreigners, as to crimes against the *exterior* safety of the State, but unfair and unreasonable as to offenses against the *interior* safety of the State.

CHAPTER V.

GERMAN LAW ON CRIMES AGAINST THE STATE, AND ITS EFFECT ON AMERICAN CITIZENS.

INTRODUCTORY.

As we said above, by German law crimes against the *exterior* safety of the State are termed "acts treacherous to the country" (*Landesverrath*), while crimes against the *interior* safety are called "acts of high treason" (*Hochverrath*). It is the latter species only of which Germany assumes extraterritorial criminal jurisdiction, while she, by sections 4, 2 of the penal code, confines extra territorial jurisdiction of "acts treacherous to the country" to *Germans*. Germany reserves to herself, of course, the right to punish such "acts treacherous to the country" committed by foreigners abroad, as may come under the rules of "usage of war," dispensing with the ordinary law.

For the purpose only of better illustrating the difference between French and German laws on foreigners' foreign crimes against the *exterior* safety of the State, we shall quote German law on "treachery to the country" (that is to say, crimes against the *exterior* safety of the State), then we shall review German law on "high treason" (crimes against the *interior* safety of the State).

A.—TREACHERY TO THE COUNTRY (LANDESVERRATH).

According to sections 87–93 of the German penal code a *German* shall be found guilty of "treachery to the country" by—

1. Engaging with a foreign government for the purpose of exciting them to a *war* against Germany (section 87).
2. Bearing arms in the ranks of a *war-enemy* of Germany (section 88).
3. Rendering whatever assistance to the *war-enemy* of Germany or injuring the German army while in war (section 89).
4. Injuring Germany, *while in war*, by—
   (*a*) Helping the enemy to her fortresses, passes, occupied places, defensive posts, or to the capture of troops, vessels, treasures, armories, ammunitions, or whatever supplies.
   (*b*) Damaging or destroying bridges or railroads to the advantage of the enemy.

(*c*) Enlisting troops for the enemy, or inducing German troops (or allies) to desert to the enemy.

(*d*) Communicating to the enemy plans of operation, or of fortresses, or of fixed positions.

(*e*) Serving to the enemy as a spy, or concealing and helping spies.

(*f*) Inciting insurrection among the troops of Germany or of her allies. (Section 90.)

As to these four degrees of treachery to the country, there was no need to legislate on foreigners; for, if foreigners bear arms in the ranks of the enemy of Germany (section 88) they belong to the army of said enemy and are entitled to all rights of the same; and if foreigners commit in a foreign country a crime as defined in sections 87–90, they could be treated, if seized in Germany, according to the "usage of war."

We must, therefore, discriminate "treachery to the country" while the latter is *in war*, or for the purpose of *exciting war*, from "treachery to the country in times of *peace*." The first species (sections 87–90) is to be dismissed from our contemplation; the latter species consists, according to section 92 of the German penal code, of the following:

5. (*a*) Publishing or communicating to a foreign government secrets of the state, or places of fortresses or documents or news, with the consciousness that their concealment from another government is necessary in the interest of the German Empire;

(*b*) Endangering the rights of the Empire (or of a federal state), towards a foreign state, by destroying or falsifying or suppressing documents or means of proof thereof;

(*c*) Managing, while trusted with an official business with another government, such business to the disadvantage of Germany.

This section 92 of the German penal code can (with exception of alinea c.) be applied only to *Germans*. (See sections 4, 2, of the German penal code in our chapter III, A, 2, 2, page 25.) Alinea c. was excepted by section 4, 1, c. of the German penal code, as seen in our chapter III, A, 2, 1, c. page 25.

Thus Germany, in excepting from punishment foreigners' foreign "treacherous acts to the country," committed in times of *peace* and not amounting to exciting war, *fairly took regard* to the patriotic sense and feeling and duty of foreigners towards their own mother country.

This section 92 of the German penal code was several times tested in the courts. At the end of the year 1886, for instance, a French commissioned officer of the name of Letellier, traveling in southern Germany, was found being in possession of plans of German fortresses. He was arrested and his case laid before the federal supreme court having jurisdiction of "treachery to the country." But that court

ordered the prisoner to be released on account of that statute providing that a foreigner can not be tried for "treachery" if no evidence be given that he committed the deed *on German soil*, that is to say, that he got those plans of fortresses in *Germany*.

That fair regard to foreigners' patriotism towards their mother country *French* law is lacking.

We are sorry that we are unable to extend our praise of fairness of German law to the *second* series of crimes against the state—to the crimes of "high treason" (Hochverrath), which we shall deal with in the next division.

B.—HIGH TREASON (HOCHVERRATH.)

"Acts of high treason," according to sections 80–86 of the German penal code, means:

(1) Attempt to kill the Emperor (or a sovereign of a federal state while in his state). To be punished with death. (Section 80.)

(2) *Attempt—*

To take a federal sovereign prisoner and to deliver him up to his enemy, or to disable him from governing;

To change, by force, the constitution of the Empire (or of a federal state), or the succession of crown; to separate a part from the federal territory (or from the territory of a federal state), or to annex it by force to another federal state or a foreign country—

To be punished with life sentence; if extenuating circumstances exist, with at least five years' fortress. (Section 81.)

(3) All such "attempts" are to be treated as "*consummated crimes of high treason*," if the accused one did any act by which the purpose was *directly* to be executed. (Section 82.)

(4) A conspiracy of several persons, to commit high treason is to be punished with five to fifteen years penitentiary or fortress, if such an act, by which the purpose had directly to be executed, were *not yet commenced with.* (Section 83.)

(5) The same punishment is to be applied to him, who, for the purpose of *preparing* high treason, is connected with the government of another state, or misuses the power of office trusted to him, or recruits or drills troops. (Section 84.)

(6) He who publicly before a crowd or an assemblage, or by circulating (or publicly affixing or showing) printed matter or such alike, shall call upon to commit high treason, shall be punished with penitentiary or fortress not less than ten years; if extenuating circumstances exist, with fortress from one to five years. (Section 85.)

(7) All other acts *preparatory* to high treason are to be punished with penitentiary from one to five years; if extenuating circumstances exist, with fortress from six months to three years. (Section 87.)

C.—EFFECT OF THE "HIGH TREASON" LAW ON AMERICAN CITIZENS.

(1) Although the crimes, embraced by sections 80–86 of the German penal code, may be divided into crimes of "consummated high treason," (sections 80–82) and crimes of "prepared high treason," sections 4, 1, of the German penal code, providing for foreigners' foreign "acts of high treason" is appliable to "preparatory" as well as to "consummated" acts of high treason. (See Daude (State attorney of Berlin), edition of the German penal code, note to section 4, 1, page 13.)

(2) History shows that criminal statutes on acts "*preparatory*" to high treason nearly always meant foul play, and were merely a trap for the purpose of catching propagandists of free thought. And such is the case with sections 85 and 86, quoted above. Let, for instance, a speaker or a writer in Germany say:

"An educated people should give preference to the republican form of Government above a monarchical one. Monarchical system is incompatible with the personal dignity of citizens, the high standing of which in literature and art entitles them to the claim of full liberty of political thought. Our aim should be, therefore, to supplant Germany with republican ideas."

This sentence, though dealing with "ideas" only, might very easily be brought under section 85. The attorney for the state may say:

"You want the people to get interested in the question of republic, that they strive for changing the monarchical form of government into a republican one. You disclaimed, indeed, the use of force, inasmuch as you advocated 'supplanting ideas' only. But how can you reach that aim, without recurring to the use of violence? Our monarch is sovereign 'by the grace of God;' nor did he nor his presumptive successors ever declare their will to resign, should it be demanded by the people. There is, thus, no possibility at all to overthrow the present monarchical government in a peaceable way. Your urging on the people to work for the propagation of republican ideas implicitly advocates the use of force for the purpose of erecting a republican government. For there has not been yet in history one single instance of a republic being erected with the good will of the former monarchical sovereign. Thus you committed the crime of *preparing* high treason."

(3) Should this argumentation not seem to be satisfactory enough, the state might support its cause and enforce the conviction of the accused one by section 86; that clause reads quite innocently, inasmuch as reducing punishment of such crimes to six months, if extenuating circumstances exist. But in reality that section, 86, comprising "*all other* acts preparatory to high treason," is the meanest trick political partisan legislation ever has indulged in against the people.

What "other preparatory" acts can be imagined besides those defined by section 85, consisting of oral, or written, or printed word, or picture, etc.?

State Attorney Daude, in commenting upon section 86 (see edition of the German penal code, by Daude), quotes, for explanation of that clause, the following decision of the German Supreme Court of October, 1881, vol. 5, p. 60:

The conception of an "act preparatory to high treason" is not excluded on account of the act lacking the purpose of making the "preparation" perfect and aiming only the contrivance of a further preparatory act.

Thus section 86 means, if we understand it right, *preparatory* to *further* preparation of *endless* preparation of final *preparation.* That is exactly the sense of section 86, as explained by the German Supreme Court.

That law is a trick for catching offensive political partisans, against which not evidence enough can be found to convict them on the ground of section 85.

(4) We might be, of course, quite indifferent to that section 86, were we not affected by it in consequence of section 4, 1, of the German penal code, providing for Germany *extraterritorial criminal jurisdiction* of foreigners' foreign offenses of high treason. We shall have, therefore, to state our *American* position towards that law.

In this regard we unhesitatingly say:

Germany is at liberty to extend punishment of "acts preparatory to high treason" to the limits of laughing, sneezing, etc., *but only within her territory;* she has no right to deprive us of our privilege granted by constitution and institutions of this country. The question is not here of organizing in this country rebellion to take effect in Germany. *The question is merely of our right, as republican citizens, to propagate republican ideas and to support them. Our republic is essentially interested in supporting republican feeling abroad, and, indeed, in behalf of its own safety,* because a monarchical government is too often inclined to declare war for the sake of conquests.

If naturalized German-Americans send some money to Germany for the support of the election of republican congressmen (to the Reichstag), this may be, according to the famous section 86 of the German penal code, "a preparation to preparation" to high treason; but we do so in *behalf of our self-defense,* which is just as legitimate as the self-defense of German monarchy. Germany has no right to interfere with our republican propaganda; the safety of our state depends on the strength of anti-monarchical feeling and ideas all over the world.

Sections 85 and 86, in connection with section 4, 1, involve a serious transgression of our right of self-defense; for they intend to prevent us from propagating such ideas as *upon which our republic is founded* and the *safety of our state is dependent.*

CHAPTER VI.

THE GERMAN DYNAMITE LAW AND ITS CONNECTION WITH EXTRA-TERRITORIAL CRIMINAL JURISDICTION.

A.—INTRODUCTORY.

We dealt heretofore with "extraterritorial criminal jurisdiction *under authority of international law*," and discovered two cases, one in French law (on crimes against the *exterior* safety of the state), and one in German law (on crimes against the *interior* safety of the state), in which foreign legislation on "extraterritorial criminal jurisdiction," *transgresses* the limits defined by international law, the limits of *justified* self-defense.

We shall come now to a third case of extraterritorial criminal jurisdiction, lying *beyond the limits of international law at all.*

Since emanation of her *organic* criminal statute-book (in 1871), Germany has indulged in continuous *special* legislation on different matters brought under criminal aspect. By such action, so contrary to German method of scientific systematizing, German criminal legislation, past 1871, lost its rational coherence and systematic connection. That is the curse of all inorganic legislation. By emanation of "special laws" the legislator loses the general view so necessary for that work. Rational legislation requires a main statute-book on a broad foundation, so that all further necessary legislation easily could be adapted to, if not inserted in, the statutes of the main book. Piecework-legislation must unavoidably lead to so strange a state of things, we find in this country, where Congress and legislatures pass inorganic laws by the dozens every year.

So Germany, by an inorganic special law of *June* 9, 1884, lost sight of her principles of "extraterritorial criminal jurisdiction," embodied in her organic statute-book.

That law bears the title of "Law on Criminal and Dangerous Use of Explosives," and is commonly termed the "*Dynamite Law*" of June 9, 1884. Its clause 12 provides that the clauses 5, 6, 7, 8, and 10 be extended to "*Germans and foreigners in foreign countries*," according to section 4, 1 of the German penal code, discussed above, Chapter III, A 2, page 25 and *seq.*; that is to say, that Germany assumes *extra-*

territorial jurisdiction of offenses, even if committed by foreigners in foreign countries, against those statutes. They read as follows:

B.—TEXT OF THE GERMAN DYNAMITE LAW OF JUNE 9, 1884.

SEC. 5. Who, by use of explosives, shall purposely endanger property or health or life of another one, is to be punished with penitentiary.

If by such act a serious bodily injury were caused, the punishment shall be not less than five years, and if the death of a person were caused, not less than ten years; if the caused death were to be imagined by the perpetrator, the latter is to be punished with death.

SEC. 6. If several persons bespoke for the perpetration of an act, as described in section 5, or if they allied for the continued perpetration of such an act, *though not yet defined in its particulars*, they shall be punished with not less than five years penitentiary, even if the resolution of perpetrating the crime *were not confirmed by acts embracing the commencement of the perpetration.*

SEC. 7. Who, with the intention of endangering property, health, or life of another one, or with intention of enabling other ones to commit that crime, shall manufacture, secure, order, or keep in possession explosives, is to be punished with penitentiary from one to ten years. The same punishment shall take place, if one, who is legally authorized to manufacture or to keep in possession explosives, shall deliver them up to others, while knowing that such explosives are destined to the perpetration of such crimes as described in section 5.

SEC. 8. Who, under circumstances not proving an allowed purpose, shall manufacture, secure, order, knowingly keep in possession or deliver up to other persons explosives, is to be punished with prison not less than one year. From this provision certain shooting materials, as defined by a special act of the federal council (Bundesrath), shall be exempted.

SEC. 10. Who publicly, before a crowd, or by circulating (or affixing or publicly displaying) writings (or other representations), or in writing (or by means of other representations), shall urge to commit such punishable acts as described in sections 5 and 6, or to participate in them, shall be punished with penitentiary; the same punishment shall take place if one, by *celebrating or glorifying such acts*, shall urge or incite to commit them.

SEC. 12. The provisions of section 4, i, of the German penal code, are to be applied to the crimes described in sections 5, 6, 7, 8, and 10 of this law, too.

C.—CRITICISMS.

I.—GENERAL VIEW OF A GRAVE AMERICAN ERROR AT LAW.

Nobody would probably have an objection to a "dynamite-law" per se, for it is only an extension of the law on murder and attempted murder. *But just on account of its capacity of a regular law on murder "extraterritorial jurisdiction" of foreigners' foreign acts is out of place.* There is no reason at all why Germany should be permitted to assume extraterritorial jurisdiction of a *certain kind* of murder and attempted murder while murder (and its attempt) is exempted from extraterritorial jurisdiction on the ground, indeed, that all civilized nations punish that crime.

If such a course as Germany took by section 12 of her dynamite-law be allowed, there would be *no limit* to extraterritorial criminal jurisdiction. The only limit to be recognized is "self-defense." If an

American citizen threatens within the United States a subject of Germany, residing on the other side, with dynamite, the right of "self-defense" were established should the Government of the United States not be in position to claim their "privilege of priority of jurisdiction." Mr. Frelinghuysen, late Secretary of State, indeed, in a dispatch of November 24, 1884, to Mr. Lowell, then United States embassador to London, made the following remarks on "lawless combinations which may secretly complot assassination, etc." (quoted in "Digest of International Law of the United States):"

> This Government can only proceed against offenders or suspected offenders, in accordance with law, and it is at least doubtful whether any law is now in existence in this country by which the publisher of the paper now in question can be called to account. I am not aware that such a law exists in any country. It is but recently that any law for punishment of *incitement to the commission of murder in foreign countries* was placed on the British statute-books. The present laws of the United States only aim to meet the cases of actual overt acts of hostility against a friendly nation, when said acts were committed within the territory of the United States. So far as I remember, this is the full extent to which other nations have gone in this direction.

I should think Mr. Frelinghuysen was in grave misapprehension of the case. There is no need for special legislation on "incitement to commit murder abroad." Every State and Territory of the United States has a law (either common or statutory) on murder and the accessoryship before the fact (including "incitement"). This law is a sufficient supply of all judicial and judicious means to meet all cases mentioned in Mr. Frelinghuysen's dispatch.

I imagine the following objection:

"As murder abroad is not subjected to the jurisdiction of the courts of this country, we have the less jurisdiction over an accessory before the fact."

But this objection is a *cunning sophism* only, for both "accessoryship before the fact" and the consummated crime itself are *separate* crimes, *each of them standing for itself.* When I incite here to commit murder abroad *I am committing that crime of incitement within this country.* We punish, of course, murder only when committed within this country, but on no other ground than in order not to interfere with the right of other states to punish murder committed on their soil. But this reasonable judicial practice is not connected with a charter of free "incitement to murder abroad."

If our law on accessory to murder should legally be interpreted so as to refer only to murder committed within the United States, such law or such interpretation would be a *violence to international law*, bebecause granting immunity to murder incited here against foreigners in foreign countries.

The fact that we do not punish murder committed abroad can not be a reason to let free "incitement to murder abroad," but, *to the contrary*, a ground *for* punishment of such accessory, in order to prevent the plotted murder from being committed abroad.

We saw above (Chapter II, D. B., page 21), from section 5353, that the United States even recognized in a certain case the *liability of extraterritorial principal*; for the same reason they can not deny the liability of *intraterritorial accessory before extraterritorial fact.*

"Incitement to murder abroad" is an intraterritorial accessory before an extraterritorial crime, and this accessory is to be prosecuted in this country as an *independent principal* to the *crime of "incitement to murder."*

Mr. Frelinghuysen says: "I am not aware that such a law (on punishment of incitement to commit crimes abroad) exists in any country. That is right; but all countries consider it as *a matter of course* that "incitement to crimes" refers to crime *at all*, irrespective of the country where it is to be committed. In this sense the supreme court of the German Empire, too, declared in their decision of June 24, 1884, that an intraterritorial accessory before an extraterritorial crime is to be held an intraterritorial principal.

After this digression I wish to say:

Should my theory, in opposition to Mr. Frelinghuysen's, that the United States (or the States of the Union) have the right to punish "incitement to murder abroad" not be sustained by the authorities of this country, then *Germany's* right to assume jurisdiction over an American incitement to dynamite-attentat against Germany would be indisputable on account of the right of self-defense, warranting assumption of extraterritorial criminal jurisdiction.

2.—TRANSGRESSION ON THE PART OF GERMANY OF OUR RIGHTS.

We refuted, in the foregoing division, Germany's right of assuming extraterritorial jurisdiction over American "incitement to murder abroad," should Mr. Frelinghuysen's theory be *disavowed* by the authorities of to-day; but in the case the authorities uphold Mr. Frelinghuysen's theory, we conceded, indeed, Germany's right of assuming jurisdiction over American dynamite cases, *provided* such attempts or incitements were directed against *Germany* or her subjects residing there; such right arising by necessity of "self-defense." But Germany, as the text of the German dynamite law shows, was not satisfied with provisions for punishment of foreign dynamite offenses against *Germany;* she *rather extended her* extraterritorial jurisdiction over *all* dynamite crimes, committed abroad, *without regard to their geographical direction.* And that is a *serious transgression of the limits of self-defense.* If American citizens conspire for a dynamite attentat, *not intended to take effect in Germany*, Germany should not be allowed to assume extraterritorial jurisdiction over them. Germany, otherwise, could as well pass a law by which she assumes jurisdiction over all unpunished Amercan lynching parties, should they be caught in Germany.

For, as to the degree of lawlessness and moral or immoral qualities, *political dynamiters and lynching parties counterbalance to each other;*

both of them pretend, to be in the necessity of revenging wronged rights, and to restore, of their own, justice, because of the deficiency or malicious refusal on the part of the legal authorities to comply with their legal duties.

Germany's assumption of jurisdiction of foreigners' foreign offenses against her dynamite law leads us, moreover, to the consideration of a *most grave circumstance.* German dynamite law punishes not only foreigners' foreign acts accessory *before* the fact, but even acts accessory *after* the fact, to wit, "*celebrating or glorifying such acts.*" (See section 10, page 40.)

Remember the dynamite attentat against the late Russian Emperor Alexander III. Hundreds of American newspapers commented then on that tragedy about as follows:

"It is terrible, indeed, to use dynamite in such a way. But who might take it amiss to the Russian people, if they can not endure any longer the brutal and murderous autocracy of the Romanoffs, who deny to the people a *constitution*, and hang or deport to Siberia, year by year, thousands over thousands of the best and most patriotic men and women for defending the demand of a constitution? What could the Russian people do otherwise, to obtain a right denied to them by violence and cruelty, than in resorting to the same means the Russian autocrat has been always using?"

I say, if in case of recurrence of a dynamite attentat in Russia, an American paper should offer an *excuse* in such manner for the course of the Russian people, Germany would take jurisdiction over the editor of such paper, were he within the German boundaries.

And yet nobody is considered, in this country, a criminal who excuses in similar way for *lynching at the Mexican border of Texas.* Of those excusing such lynching not one of one thousand probably would lend himself a hand to lynching purpose. This shows that we may excuse in a certain way an attentat, without being dynamiters at all. And the difference between "excusing," and "celebrating," or "glorifying," amounts to so little as to make it very easy to comment upon an excuse as "glorifying," or "celebrating."

And think, further, of the Irish-Americans in this country, when they get an opportunity, to comment on Ireland's struggle against England.

I don't denounce a dynamite law itself as unreasonable, but merely its extension to such unjustifiable limits, as is the case with the German dynamite law, and I denounce the transgression on the part of Germany of the limits of justified self-defense.

No declaration of a foreign power, to assume extraterritorial criminal jurisdiction, *can deprive us of our right of criticising the struggles of foreign peoples for their liberty* and of *sympathizing* with them.

The decision, whether or not our excuse for a foreign dynamite case, that was *not incited nor fostered by us*, reaches the climax of an act "accessory after the fact," *must be left with the authorities of this country*, as

well as the decision, whether or not such act be "accessory before the fact."

In this country, criticising a *fact* is not held an "accessory act" to the fact, though, such criticism makes a defense for said fact submitted to criminal jurisdiction.

I can not refrain from citing a newspaper notice I met in these very days, on Russian dynamite. A cable dispatch of one of our newspaper syndicates from February 16, 1889, printed in the issues of Sunday, February 17, 1889, dated *London*, and to be found in the St. Louis Republic of that day, on the tenth page, columns 3 and 4, deals with the Russian Emperor's son as follows:

It appears, that the czarewitz, who, *dynamite permitting*, is one day to be the Emperor of Russia, has, etc.

Even this cable dispatch may bring the editors of these papers who printed it under the extraterritorial jurisdiction of Germany.

We shall have, therefore, to strictly refute any right assumed by Germany to exercise such extravagant extraterritorial jurisdiction; we deny it even in the case such criticism of a dynamite case relates to *Germany. For our right of criticism can not be infringed upon by any foreign law.*

Another danger we are threatened with I find in section 6 of the German dynamite law:

If several persons bespoke for the perpetration, etc., of such an act, *though not yet defined in its particulars*, they shall be punished, etc., even if the resolution of perpetrating the crime *were not confirmed by acts embracing the commencement of the perpetration.*

That means a conviction of innocent persons, against which no evidence can be brought to light, except the oath of a witness, who claims to have overheard the accused ones conspiring for perpetration, etc.

According to this section 6 no evidence of a *fact* is necessarily to be produced, only a *witness's oath.*

Take for instance the following case:

I return, on a visit trip, to Germany. There I meet two Germans, whom I knew in St. Louis, but who were bitterly opposed to me on account of political or private or business reasons.

They denounce me and swear:

"We met this man every noon at the table of Tony Faust in St. Louis; at the 1st January we overheard him at such opportunity bespeaking with other ones, we shall be able to identify, the plan of perpetration of a dynamite crime."

I would have to answer, that I remember very well to have often met those two witnesses at the table of Tony Faust in St. Louis; that I was there at the 1st January, too, with two gentlemen, and that we had a pleasant dinner-talk, perhaps *we chatted* about some dynamite affair in an innocent way; but we did not plan any perpetration, etc.

Now, what can I do, if those two witnesses *swear?*

I am not able to produce those two gentlemen, with whom I chatted at the 1st January; they were tradesmen; one has gone to Mexico—I don't know where there—and the other one had disappeared to Canada.

With the aid of two Pinkerton detectives, to be appointed for that purpose here by the German secret police, every offensive German-American returning to the mother country can be indicted on the ground of section 6 of the dynamite law. There are people, and especially Pinkertonians, that swear to anything desired of them.

I should think the United States would do better not to wait for the actual appearance of such a case, but to prevent its eventuality.

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